

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7249 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

NALINKUMAR JAYANTILAL VORA

Versus

COMPETENT AUTHORITY AND DY. COLECTOR (ULC)

Appearance:

Shri J.R. NANAVATY, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at

Rajkot (respondent No.1 herein) on 24th July 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 14th June 1988 inter alia in Appeal No.Rajkot-1506 of 1984 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be within the ceiling limit for the purposes of the Act.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Rajkot. It included certain parcels of land situated within the urban agglomeration of Rajkot in all admeasuring 4047.10 square metres (the disputed lands for convenience). It may be mentioned at this stage that, by his order passed on 15th June 1980 and communicated on 21st November 1980, respondent No.1 granted permission under section 21 (1) of the Act with respect to the disputed lands on certain terms and conditions. The aforesaid declaration was processed by respondent No.1 in due course. After observing necessary formalities under section 8 of the Act, by his order passed on 24th July 1984 under section 8 (4) thereof, respondent No.1 found the petitioner's holding to be to the tune of 1309.23 square metres and, since it was found to be within the permissible ceiling limit, the proceeding was dropped. Its copy is at Annexure-A to this petition. It is surprising that the petitioner felt aggrieved by the order at Annexure-A to this petition. He carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-1506 of 1984. It was heard with three other allied appeals. By the common order passed by respondent No.2 on 14th June 1988 in the aforesaid appeals, respondent No.2 dismissed it. Its copy is at Annexure-B to this petition. It appears to have aggrieved the petitioner. He has therefore approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. As pointed out hereinabove, under the impugned order at Annexure-A to this petition, no holding of the petitioner is declared surplus. Learned Advocate Shri Nanavaty for the petitioner has however urged that the

permission granted under section 21 (1) of the Act qua the disputed lands has come to be cancelled by the order passed by respondent No.1 on 11th June 1986 and it has been affirmed in appeal by the order passed by respondent No.2 on 15th March 1988. I am informed that the aforesaid orders passed on 11th June 1986 and 15th March 1988 are under challenge in Special Civil Application No.7253 of 1988. Learned Advocate Shri Nanavaty for the petitioner has submitted that, in case the aforesaid writ petition is rejected or that the terms and conditions on which it is accepted are not complied with, the disputed lands will be included in the petitioner's holding and at that stage the orders under challenge in this petition would come in the way of the petitioner. It has been urged that the petitioner's holding includes certain house properties and they have to be excluded from his holding in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 SUPREME COURT at page 1567.

4. It cannot be gainsaid that the cancellation of the permission under section 21 (1) of the Act will be by passing the necessary order under section 21 (2) thereof. It has been provided therein that on cancellation of the permission under section 21 (1) of the Act provisions of Chapter III of the Act would apply. The Scheme of the Act shows that Chapter III thereof starts with section 3 thereof. In that view of the matter, necessary formalities prescribed thereunder will have to be followed by respondent No.1 herein after his order under section 21 (2) of the Act is passed and that order is not disturbed. In that case, the matter will be reopened and the excess land in the holding of the petitioner will be determined according to law in the light of the provisions contained in Chapter III thereof. It will be open to the petitioner at that stage to point out to respondent No.1 regarding exclusion of certain properties from his holding in the light of the binding rulings of the Supreme Court applicable to the case. The petitioner may cross the bridge when he reaches it. He need not try to cross the bridge in advance.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexures-A and B to this petition call for no interference by this court in this petition. It deserves to be rejected.

6. In the result, this petition fails. It is hereby rejected. It is however clarified that this judgment of mine will not preclude respondent No.1 from reopening the case after the permission granted under section 21 (1) of

the Act qua the disputed lands is cancelled by the order passed under section 21 (2) thereof and that order remains undisturbed in any other proceeding. In that case, it needs no telling that respondent No.1 will act according to law. It will be open to the petitioner to have his say in the matter in the light of the law prevalent at that time and in the light of the binding rulings of the Supreme Court applicable to the case. Rule is accordingly discharged with no order as to costs.

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